



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590



REPLY TO THE ATTENTION OF:

MEMORANDUM

DATE: 30 JAN 1992

FROM: *JK* Joseph A. Kaweck, Civil Investigator

THROUGH: *JK* Tom Marks, Chief, Responsible Party Search Section  
*JK* Tom Mateer, Acting Chief, Superfund Program Management Branch

TO: Lynn Peterson, Acting Chief, Solid Waste And Emergency Response Branch, Office of Regional Counsel  
John Tielsch, Attorney, Office of Regional Counsel

SUBJECT: Request for legal opinion:

In support of the NORTH WEST INDIANA GEOGRAPHIC ENFORCEMENT INITIATIVE and in the spirit of multi-media enforcement, the Responsible Party Search Section (RPSS) is continuing its information gathering efforts concerning discharges to the GRAND CALUMET RIVER. We are currently preparing several work assignments for records compilations and review of 104E responses.

In order to assist us in these efforts, the RPSS would like to have ORC provide a legal opinion concerning the following:

1) THE POSSIBILITY OF APPLYING CERCLA LIABILITY TO DIRECT DISCHARGERS AND POTW'S INCLUDING THEIR INDUSTRIAL USERS WHO EXCEED NPDES PERMIT LIMITS.

We would like ORC to address whether discharges of priority pollutants in excess of NPDES permit limits can be considered a release under CERCLA. And, can liability extend to industrial users of POTW'S who exceed their local limits. Also, can the POTW be considered a transporter and the industrial user a generator for purposes of CERCLA enforcement.

2) IF THE ABOVE CAN BE USED AS AN ENFORCEMENT TACTIC, WHAT TYPE OF EVIDENCE OR OTHER INFORMATION SHOULD BE COLLECTED BY RPSS DURING THE PRP SEARCH.

Thank you for your assistance concerning this matter.

**MEMORANDUM**

**FROM:** JOSEPH A. KAWECKI, CIVIL INVESTIGATOR

**THROUGH:** TOM MARKS, CHIEF, RPSS

**TO:** ORC

**SUBJECT:** REQUEST FOR LEGAL OPINION

IN SUPPORT OF THE NORTH WEST INDIANA GEOGRAPHIC ENFORCEMENT INITIATIVE AND IN THE SPIRIT OF MULTI-MEDIA ENFORCEMENT THE RPSS IS CONTINUING ITS INFORMATION GATHERING EFFORTS CONCERNING DISCHARGES TO THE GRAND CALUMET RIVER. WE ARE CURRENTLY PREPARING SEVERAL WORK ASSIGNMENTS FOR RECORDS COMPILATIONS AND REVIEW OF 104E RESPONSES.

IN ORDER TO ASSIST US IN THESE INFORMATION GATHERING EFFORTS THE RPSS WOULD LIKE TO HAVE ORC PROVIDE A LEGAL OPINION CONCERNING THE FOLLOWING:

1) THE POSSIBILITY OF APPLYING CERCLA LIABILITY TO DIRECT DISCHARGERS AND POTW'S INCLUDING THEIR INDUSTRIAL USERS WHO EXCEED NPDES PERMIT LIMITS.

WE WOULD LIKE ORC TO ADDRESS WHETHER DISCHARGES OF PRIORITY POLLUTANTS IN EXCESS OF NPDES PERMIT LIMITS CAN BE CONSIDERED A RELEASE UNDER CERCLA. AND, CAN LIABILITY EXTEND TO INDUSTRIAL USERS OF POTW'S WHO EXCEED THEIR LOCAL LIMITS. ALSO, CAN THE POTW BE CONSIDERED A TRANSPORTER AND THE INDUSTRIAL USER A GENERATOR FOR PURPOSES OF CERCLA ENFORCEMENT.

2) IF THE ABOVE CAN BE USED AS AN ENFORCEMENT TACTIC WHAT TYPE OF EVIDENCE OR OTHER INFORMATION SHOULD BE COLLECTED BY RPSS DURING THE PRP SEARCH.

THANK YOU FOR YOUR ASSISTANCE CONCERNING THIS MATTER.